

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

EDWARD JAMES COLLINS,

Petitioner,

v.

CIVIL ACTION NO. 5:02-1375

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court are petitioner's motions for appointment of counsel upon appeal, and for a copy of the transcripts of the evidentiary hearing held in this case (Doc. No. 87), and for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) (Doc. No. 88). For the reasons outlined below, petitioner's motions (Doc. Nos. 87 & 88) are **DENIED**.

A. Reappointment of Counsel

Petitioner first moves for the reappointment of counsel for the purposes of conducting his appeal. (See Doc. No. 86.) In the course of evaluating petitioner's claims, the court found it necessary to appoint counsel in order to conduct an evidentiary hearing. (See Doc. No. 73.) Because that hearing has been conducted, the court does not believe that the appointment of counsel would further this case. As such, petitioner's motion for the appointment of counsel (Doc. No. 86) is denied.

B. Evidentiary Hearing Transcripts

Petitioner's second motion is for the production of evidentiary hearing transcripts for use on appeal. (See Doc. No. 87.) As the court noted in its Memorandum Opinion dismissing this case, the summary of the evidentiary hearing included in the magistrate judge's proposed findings and recommendations is entirely accurate. (See Doc. No. 86 at 5.) The court already denied petitioner's motion for production of evidentiary hearing transcripts when petitioner was in the process of filing objections to the magistrate judge's proposed findings and recommendation. (See Doc. No. 83 at 1-2.) Because the court does not believe that the production of hearing transcripts is necessary for petitioner to appeal this court's decision, petitioner's request for the production of such transcripts (Doc. No. 86) is denied.

C. Certificate of Appealability

The issuance of a certificate of appealability is appropriate only where there is a "substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that the district court's prior rulings are either debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001).


As the court has previously noted, petitioner's constitutional claims are devoid of merit. (See Doc. No. 86 at 5-6.) As such, the court must deny petitioner's motion for a certificate of appealability (Doc. No. 88).

D. Conclusion

The Clerk is directed to forward a copy of this Order to the plaintiff, pro se, and to all counsel of record.

IT IS SO ORDERED this 13th day of April, 2006.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge